

[REDACTED]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

WC 03-40

In the Matter of)
)
Mpower Communications Corp.,)
Transferor)
And)
Xspedius Management Co. Switched)
Services, LLC (Domestic Interstate)
Service) and Xspedius Management Co.)
International, LLC (International)
Service))
Transferees)
)
Joint Application Pursuant to Sections)
63.04 and 63.24 of the Commission's)
Rules for Authorization Under Section)
214 To Transfer Certain Customers and)
Related Assets.)

JOINT APPLICATION

To: International Bureau
Wireline Competition Bureau

I. INTRODUCTION

Mpower Communications ~~Corp.~~ ("Mpower"), pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, and Sections 63.04 and 63.24 of the Commission's rules, 47 **C.F.R.** §§ 63.04 and 63.24, hereby requests authority, to the extent required, to transfer Mpower's Texas customers to Xspedius Management ~~Co.~~ Switched Services.. **LLC** ("XMSS") which will provide domestic interstate and intrastate services, and to Xspedius Management Co. International, **LLC** ("XMI") which will provide international service to those customers. Mpower's Texas network assets will be transferred to a non-carrier affiliate of XMSS and XMI as discussed below. The proposed transaction is a transfer of assets and customers

not resulting in a reduction or impairment of service, as contemplated in the Commission's March 21, 2002 Report and Order in CC Docket No. 01-150, 17 FCC Rcd 5517 (2002). *See* 17 FCC Rcd at 5548.

II. DESCRIPTION OF THE PARTIES AND THE TRANSACTION

Mpower is a competitive local exchange carrier currently providing local, long distance, switched access, other access, DSL, and Internet access services in 27 markets in California, Florida, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas. Mpower is bringing geographic concentration to its business by transitioning its customers and assets in several states to other service providers.

Mpower requests authorization in this Joint Application to transfer all of its assets and associated customers in Dallas, Houston, Fort Worth, San Antonio and Austin, Texas, to affiliates of Xspedius Management CO., LLC ("XMC"). Mpower will transfer all of its Texas network assets, including switches, collocation equipment and ILEC-leased facilities, to Xspedius Equipment Leasing, LLC ("XEL"), and will transfer its customers to XMSS for domestic service and to XMI for international services. XMSS and XMI will serve those customers in part by leasing facilities in Texas from XEL.

XMSS, XMI and XEL are subsidiaries of XMC, a holding company headquartered in St. Louis, Missouri, which provides competitive telecommunications services through its operating subsidiaries. XMC has an operating footprint in 36 markets spanning 20 states and the District of Columbia. In 2002, XMC acquired customers and local switching assets and more than 3,500 route miles of fiber, as well as fiber and conduit inventory in Atlanta, Dallas/Ft. Worth, Houston, Fort Lauderdale/Miami/West Palm Beach, Tampa, and Washington, DC/Northern Virginia

from e.spire Communications, a competitive telecommunications camer then in
bankruptcy

**111. INFORMATION PURSUANT TO SECTIONS 63.04 AND 63.24 OF THE
COMMISSION’S RULES**

Pursuant to Sections 63.04 and 63.24(e)(2) of the Commission’s rules. Mpower
and XMSS submit the following information required under Section 63.18 in support of
this Joint Application:

- (a) The name, address, and telephone number of Mpower is:

Mpower Communications Corp
175 Sully’s Trail, Suite 300
Pittsford, NY 14534
(585) 218-6550

The name, address, and telephone number of XMSS and XMI are:

Xspedius Management Co. International, LLC
and
Xspedius Management Co. Switched Services, LLC
5555 Winghaven Blvd.
O’Fallon, MO 63366
636-625-7000

(XMC and XEL also share this same address.)

- (b) Mpower is a corporation organized under the laws of the State of Nevada.

XMSS and XMI are limited liability companies organized under the laws of the State of
Delaware

- (c) Correspondence concerning this Joint Application should be sent, for
Mpower, to:

Brett A. Snyder, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Avenue, NW
Washington, DC 20009-5427
(202) 986-8000
(202) 986-8102 Facsimile

with a copy to:

David Woodsmall, Esq.
Vice President – Legal & Regulatory
Mpower Communications Corp.
175 Sully's Trail, Suite 300
Pittsford, NY 14534
(585) 218-6550
(585) 218-0635 Facsimile
dwoodsmall@mpowercom.com

Correspondence for this Joint Application should be sent, for XMSS and XMI, to:

James J. Freeman, Esq.
Kelley, Drye & Warren LLP
1200 19th Street, N.W..
Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9778
Fax: (202) 955-9792
Email: j.freeman@kellevdrye.com

With a copy to:

James C. Falvey, Esq.
Senior Vice President, Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Dr., Suite 200
Columbia, MD 21046
Telephone: (301) 361-4298
Fax: (202) 361-7654
Email: jim.falvey@xspediusmc.com

(d) Mpower received its global resale Section 214 authorization from the Commission on September 19, 1997, under its former name, MGC Communications, Inc., in File No. ITC-214-19970731-00440

XMSS holds blanket domestic 214 authority pursuant to §63.01 of the Rules
XMI holds international 214 authority pursuant to ITC-ASG-20020711-00372, granted August 16, 2002

(h) XMI and XMSS are wholly owned by XMC. XMC, in turn, is principally owned by:

Thermo Telecom Partners LLC
644 Governor Nicholls Street
New Orleans, LA 70116
Citizenship: US
Principal business: investment
Percentage ownership: 98%

Which is wholly-owned by:

James Monroe III's Grantor Trust
James Monroe, Trustee
644 Governor Nicholls Street
New Orleans, LA 70116
Citizenship: US
Principal business: investment
Percentage ownership: 100%:

100% interest in the Trust is held by:

James Monroe III
644 Governor Nicholls Street
New Orleans, LA 70116
Citizenship: US
Principal business: investment
Percentage ownership: 100%
(XEL is 98% owned by XMC.)

(i) By its signature to this Joint Application, XMC certifies that it is not a foreign carrier nor is it affiliated with a foreign carrier

(j) By its signature to this Joint Application, XMI certifies that it does not seek to provide international telecommunications service to any destination country for which any of the following is true: (1) XMI is a foreign carrier in that country; (2) XMI controls a foreign carrier in that country; (3) Any entity that owns more than 25% of XMI, or that controls XMI, controls a foreign carrier in that country; (4) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25% of XMI and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States,

(k) No response required.

(l) No response required.

(m) No response required.

(n) By its signature to this Joint Application, XMI certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international trade route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) By its signature to this Joint Application, XMI certifies that, pursuant to sections 1.2001-1.2003 of the Commission's rules, 47 C.F.R. §§ 1.2001-1.2003, none of Xspedius Management Co., LLC, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. International, LLC, nor any of their members, officers or directors, nor any person holding five percent or more ownership interest in them, is subject to a denial of federal benefits that include FCC benefits pursuant to Section 5301 of the Federal Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

(p) The Applicants request streamlined processing for this Joint Application. This Joint Application is eligible for streamlined processing under Section 63.12 of the Commission's rules because (1) XMI is not affiliated with a foreign carrier in any destination market; (2) XMI is not affiliated with any dominant U.S. carrier whose international switched or private line service it seeks authority to resell; and (3) XMI does not seek authority to provide switched basic services over private lines.

IV. PUBLIC INTEREST

The proposed transaction will allow Mpower to enhance its competitive position by providing Mpower with greater flexibility in obtaining financing which will yield benefits for Mpower and allow Mpower to continue operations in the long term. Twelve

months ago, Mpower set out on a path to strengthen its balance sheet. In July of 2002, Mpower completed a financial recapitalization that retired approximately \$600 million in long-term debt and preferred stock. **As** of January 3, 2003, Mpower's remaining \$50 million in long-term debt was also retired. Coupled with the proposed transaction described herein, the resulting new cash, reduced operational cost structure and new financing are expected to significantly improve Mpower's long-term viability.

The proposed transaction will be one of several to promote Mpower's long-term viability. Mpower is continuing its long-term plan for financial viability by bringing geographic concentration to its business by transitioning its customers and assets in Florida, Georgia, Ohio, Michigan, and Texas to other service providers. Each of these transactions is expected to result in cash infusions to Mpower and significant reductions to the Mpower's cost structure. Importantly, these transactions are expected to provide uninterrupted service for customers transitioning from Mpower and job opportunities for the company's employees in these markets.

As a result of this transaction, XMC and its affiliates will be in a better position to compete with Southwestern Bell Telephone Company, the dominant incumbent local exchange carrier in Texas. XMC currently has networks, switches, and/or customers in Austin, Corpus Christi, Dallas/Ft. Worth/Irving, El Paso, Houston, and San Antonio. The acquisition of the Mpower assets will solidify and expand XMC's presence in Texas, and make it a more formidable competitor in the Texas markets. By strengthening Mpower in other markets, and XMC in Texas, this transaction will enhance competition and serve the public interest.

The proposed transaction is not detrimental to the public interest because customers currently being served by Mpower will be served by XMSS and XMI after the

proposed transfer of assets. Because affected customers will be served by XMSS and XMI, the proposed transaction will not result in a decrease in currently available services or an increase in rates charged to customers. The proposed transaction is necessary for Mpower's long-term viability, will not adversely affect customers currently served by Mpower, and will enhance the competitive position of both Mpower and XMC. The Commission's grant of this Joint Application is therefore consistent with the public interest in promoting competition among telecommunications carriers.

V. INFORMATION PURSUANT TO SECTION 63.04 OF THE COMMISSION'S RULES

Information required pursuant to section 63.04 is provided in the *Section 63.04*


Attachment to this Joint Application

VI. CONCLUSION

WHEREFORE, Mpouer, XMSS and XMI respectfully request that the Commission approve this Joint Application for the reasons set forth herein

Respectfully submitted

MPOWER COMMUNICATIONS CORP

By: 
David Woodsmall
Vice President — Legal & Regulatory

XSPEDIUS MANAGEMENT CO. SWITCHED
SERVICES, LLC
XSPEDIUS MANAGEMENT CO.
INTERNATIONAL, LLC

By: _____
James C. Falvey
Senior Vice President, Regulatory Affairs
Xspedius Management Co , LLC

Dated: January 24, 2002

VI. CONCLUSION

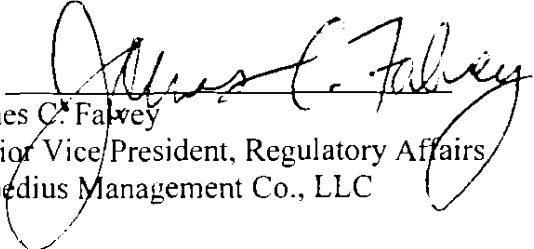
WHEREFORE, Mpower, XMSS and XMI respectfully request that the Commission approve this Joint Application for the reasons set forth herein.

Respectfully submitted

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By: _____
David Woodsmall
Vice President — Legal & Regulatory

XSPEDIUS MANAGEMENT CO. SWITCHED
SERVICES. LLC
XSPEDIUS MANAGEMENT CO.
INTERNATIONAL. LLC

By: 
James C. Falvey
Senior Vice President, Regulatory Affairs
Xspedius Management Co., LLC

Dated: January 24, 2002

SECTION 63.04 ATTACHMENT

Applicants submit the following information pursuant to section 63.04(a)(6)-(12) of the Commission's rules:

(6) A description of the transaction

The transaction is described in Section II of this Joint Application

(7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area

Mpower is a competitive local exchange carrier currently providing local, long distance, switched access, other access, DSL, and Internet access services in 27 markets in California, Florida, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas

XMC, a competitive communications carrier headquartered in St. Louis, Missouri, through its operating affiliates, including XMSS and XMI, operates in 36 markets located in the District of Columbia and the following 20 states: Alabama, Kentucky, Florida, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Arizona, New Mexico, Colorado, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Maryland, and Virginia. XMC provides local long distance, international, access and data services to its primary business customers.

(8) Presumptive streamlined treatment

Streamlined procedures are presumed to apply to this Joint Application under section 63.03(b)(2)(i) of the Commission's rules. 47 C.F.R. § 63.03(b)(2)(i). The proposed transaction would result in (1) XMSS having a market share in the interstate, interexchange market of less than 10 percent; and (2) XMSS providing competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction. Neither Mpower nor XMSS is dominant with respect to any service.

(9) Identification of all other Commission Joint Applications related to the same transaction

XMSS will file, in the near future, a notification under 47 CFR 64.1120(e) relating to the transfer of Mpower's customers to XMSS and XMI without obtaining individual subscriber authorization.

XMC has pending a Joint Application to acquire control of Xspedius, LLC. This Joint Application was filed on December 26, 2002, but has not yet received a file number. Although the Joint Application involves XMC, it does not directly affect this transaction. The Joint Application proposes that XMSS and XMI will become subsidiaries of Xspedius, LLC which will be controlled by XMC

(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure

Mpower and the Xspedius Companies are not requesting special consideration of this Joint Application.

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction;

None

(12) Public Interest Statement

The Public Interest Statement is set forth in Section IV of this Joint Application,